



PREGNANCY & HUMAN RIGHTS IN THE WORKPLACE

POLICY AND BEST PRACTICES

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GROSSESSE ET DROITS DE LA PERSONNE EN MILIEU DE TRAVAIL -
POLITIQUE ET PRATIQUES EXEMPLAIRES

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Women in the workplace are valued employees entitled to equality, dignity, respect and accommodation of their needs when they are attempting to become pregnant, while they are pregnant, and as they return to work following a pregnancy-related absence.

WHAT IS THE PURPOSE OF THIS POLICY?

This policy will help employers, unions, and employees under federal jurisdiction to better understand their legal rights, obligations, and duties regarding pregnancy-related discrimination issues.

It will also explain some of the employer benefits of providing respectful and inclusive workplaces for pregnant employees, identify potentially discriminatory practices, and offer practical solutions.

WHAT IS THE COMMISSION'S OFFICIAL POLICY STATEMENT?

The *Canadian Human Rights Act* (the Act) prohibits discrimination related to pregnancy. Pregnancy-related discrimination is a form of sex discrimination, because only women can become pregnant. Discriminatory practices related to pregnancy, such as negative treatment, refusal to hire or promote, termination of employment, or harassment, are against the law under the Act.

Pregnancy in the workplace is a fundamental human rights issue of equality of opportunity between women and men. Women should not suffer negative consequences in the workplace simply because they are pregnant. Job functions and workplace rules may affect a pregnant employee differently than other employees. As a result, adjustments to working conditions may be required to reduce or eliminate discriminatory effects.

Employers have a legal obligation to accommodate pregnancy-related needs unless the accommodation will cause undue hardship. Undue hardship considers factors such as health, safety and cost. The pregnant employee, the employer, and other parties such as union representatives, must cooperate and compromise to find reasonable and practical solutions.

In addition to fulfilling their legal obligations, the Canadian Human Rights Commission (the Commission) encourages employers to take additional steps to prevent pregnancy-related discrimination, to resolve employee concerns quickly and effectively, and to foster a human rights culture in their workplaces.

This Policy is subject to the Act, and to decisions by the Canadian Human Rights Tribunal and the Courts, and should be read in conjunction with those decisions. This policy is not a substitute for legal advice.

WHO IS COVERED UNDER THIS POLICY?

This policy applies to all employers under federal jurisdiction subject to the *Canadian Human Rights Act* and the *Employment Equity Act*, and to the unions and employees of these organizations. This includes federal government departments, agencies and Crown corporations, banks, inter-provincial transportation companies (including trucking, bus, rail, and air), telecommunications service providers, and First Nations Bands.

Employees at these workplaces are protected from discrimination in the workplace. This protection extends to full-time, part-time, temporary, probationary, and contract workers, as well as volunteers, and job applicants.

HOW IS PREGNANCY-RELATED DISCRIMINATION DEFINED?

Discrimination is an action, decision or policy that denies an individual or a group a benefit, or affects them negatively based on one or more of the grounds of discrimination identified in the Act. Pregnancy-related discrimination means any action, decision, or policy that negatively affects a woman as a result of her pregnant status.

What actions might result in discrimination?

The following actions are prohibited by the Act if they result in discrimination related to pregnancy:

- refusing to hire or promote;
- harassment¹;
- adverse differential treatment in employment;
- termination of employment²;
- instituting or following policies³ or practices⁴; and
- failure to provide reasonable accommodation.

What are pregnancy-related conditions and circumstances?

Pregnancy includes the process of pregnancy from fertility treatment(s), through childbirth, to the post-delivery and breastfeeding period. Pregnancy also includes pregnancy related conditions and circumstances.

Pregnancy-related conditions include, but are not limited to:

- fertility treatment(s) and/or family planning;
- medical or health conditions or complications that might affect or be affected by pregnancy or childbirth (e.g. diabetes, high blood pressure, etc);
- miscarriage or conditions arising as a direct or indirect result of miscarriage;
- stillbirth or conditions arising as a direct or indirect result of stillbirth; and
- abortion or conditions arising as a direct or indirect result of abortion.

Pregnancy-related circumstances include:

- planning or attempting to conceive;
- childbirth;
- reasonable recovery time after childbirth, miscarriage, stillbirth or abortion;
- pregnancy as a surrogate;
- placing a newborn baby for adoption;
- post-pregnancy maternity leave; and
- breastfeeding.

How does pregnancy relate to other grounds of discrimination?

Pregnancy and family status

The Act also provides protection from discrimination on the ground of family status, which includes the status of being related to someone as a parent or a spouse.

Family status issues may be raised in the workplace by people related to a pregnant woman (such as a spouse or partner), or by those related to the expected child (such as an intended mother or father of a surrogate pregnancy or adoption). For example, a spouse of a pregnant woman may need time off work to accompany her to a medical appointment.

Family status rights also consider a broader range of issues beyond pregnancy, such as parental leave for new mothers or fathers, and child-care-related needs. Family status issues can be very complex.

Although this policy is focused on pregnancy-related rights only and does not discuss family status rights in detail, it is important for employees and employers to note the connection between these two protected grounds.

The same broad principles of human rights, dignity, respect, and accommodation that are explained in this policy, can be applied to any ground protected under the Act, including family status.

Other grounds and multiple grounds

Pregnancy is not a form of disability under the Act.

However, pregnancy may affect or be affected by other medical issues. Some employees may have needs related to pregnancy and other grounds such as disability. For example, both male and female employees may need time off for specialized medical care if they have underlying conditions that complicate fertility, conception, or pregnancy. Pregnancy-related disability issues might arise before, during, or after pregnancy.

Some groups of women may also be particularly vulnerable to discrimination or harassment, due to unfair but nevertheless persistent negative stereotypes or perceptions of these groups as pregnant women or as mothers. All pregnant women are deserving of equal respect and dignity in the workplace. Teasing, demeaning, or ridiculing pregnant employees because they are—for instance—disabled, single, young, lesbian, Aboriginal, transgendered, Muslim, Jewish, Catholic, or atheist, can be a form of discrimination.

The Act recognizes that discrimination may be related to more than one ground.⁵ Pregnant women who believe they are being discriminated against or harassed may make a complaint on more than one ground. For example, if a pregnant woman felt she was being harassed at work, because she was pregnant and single, she could make a complaint on the grounds of sex and marital status.

WHAT IS THE DUTY TO ACCOMMODATE?⁶

Some people may need to change the way they work because of pregnancy-related needs and an employer has a legal duty to meet those needs.⁷ An employer must take whatever measures are necessary to allow its employees to work to the best of their ability without being limited by discrimination. For example, a pregnant employee may need additional time for bathroom breaks; these should be allowed without docking her existing break times.

It is important to remember that the duty to accommodate pregnancy-related needs only applies when an employee has a real need and has communicated what that need is. The duty to accommodate is not intended to create an obligation for an employer to meet every request or preference. The pregnant employee is entitled to reasonable accommodation, but she is not necessarily entitled to a perfect solution, nor is she guaranteed her preferred option. However, she should not be forced to accept an undignified solution, or one that punishes her.

Each situation involving the duty to accommodate must be looked at on a case-by-case basis, since each pregnant employee will have unique circumstances and individual needs, and each workplace is different.

What is undue hardship?

The duty to accommodate ends when the employer experiences undue hardship. An employer may need to make some adjustments, and even bear some costs, to help a person do their job,⁸ even if these might cause some hardship to the employer. However, at the point where factors such as safety, health or cost make the burden on the employer too high, accommodating the individual could create undue hardship for the employer. Once accommodation reaches undue hardship, an employer may not be required to accommodate an employee further.⁹

It is important to document accommodation requests, the steps that were taken to accommodate the employee, as well as any evidence that may lead an employer to conclude they have reached the point of undue hardship. The point of undue hardship varies for each employer and in each situation.

Health and safety risks and pregnancy

Health and safety in the workplace is important, and should be balanced with the right of a pregnant employee to participate fully in the workplace.

Doctor-ordered restrictions should be followed, but in the absence of this, employers should not assume a woman is unable to perform her duties merely because she is pregnant. A pregnant employee should raise any concerns with her supervisor or health and safety officer at the earliest opportunity. If an employer believes that workplace conditions will result in a serious health or safety risk to a pregnant employee, this should be discussed with her.¹⁰ Where possible, employers should find ways to reduce or eliminate the source of harm, protect the pregnant employee in her substantive job, or find temporary options to avoid health risks during the pregnancy period.¹¹ The pregnant employee should work with the employer to find alternate ways to reduce risks and still fulfill the core functions of her job. Temporary reassignment to another position, or temporary leave, may be possible solutions in some workplaces.

More information on this topic is available in the Treasury Board of Canada's [Manager's Handbook Canada Labour Code – Part II](#).

Health and safety risks and accommodating pregnancy: Finding the balance – A practical example

A job in a scientific lab may require a high level of exposure to chemicals proven to be toxic for pregnant women. This fact might appear to eliminate a pregnant candidate, even if she is the top applicant.

However, a top candidate must not be denied a job opportunity if she can be accommodated throughout her pregnancy.

An employer must first ask how the pregnancy can be accommodated in the workplace:

Is chemical exposure unavoidable during the period of the pregnancy?

Can the core functions of the job be done without the risk of exposure from specific toxic chemicals that pose a risk??

Can certain functions be shared with others for the duration of the pregnancy?

What can be done to adjust the job or the working conditions to make it safer?

If temporary adaptations to the job can be made to increase the safety for a pregnant employee, the employer should attempt to make these changes.

For example, if the position only required brief exposure to the chemical-filled areas while traveling to regular meetings, finding alternate routes through the workplace to avoid exposure, moving the meeting room to a different location, or giving the pregnant employee additional protective gear could all provide simple temporary solutions to this issue.

WHAT ARE THE ROLES AND RESPONSIBILITIES OF EMPLOYEES, EMPLOYERS, AND UNIONS?

All parties, including the employee, supervisors and managers, and union representatives, are responsible for cooperating and communicating respectfully, and in a timely manner, in the search for accommodation in the workplace.

Employees

When a pregnant employee needs adjustments to her workplace, she has the responsibility to communicate this to her employer in a clear and timely way. She is also responsible to work with her employer and union to explore options for accommodation. She has the responsibility to accept a reasonable solution that accommodates her and allows her to fulfill the core functions of her position, even if the solution offered is not her preferred option.

An employee should provide sufficient medical information so that the employer can make an informed decision regarding a request for accommodation. In some cases, initial notes from medical professionals may raise issues that require more detail in order to arrange the correct accommodation. When it is reasonably required, employees should follow-up with their doctors to provide this information.

Employers

It is the employer's responsibility to accommodate the needs of a pregnant employee by removing barriers that may limit her ability to do her job. It must seek out and explore alternatives, offering reasonable and dignified solutions to accommodate the employee, up to the point of undue hardship.

Employers should make every effort to accept the medical advice of the employee's doctors. Clarifications or supplementary information should only be requested when this is necessary to arrange accommodation.

Union or employee representatives

Union and employee representatives have the responsibility to consider options, including those that may compromise union rules, to work towards solutions that accommodate the employee's needs.

Accommodation involves compromise - A practical example

A uniform is required on the job; it is supplied by and paid for by the employer for all employees. A pregnant employee asks for two new uniforms in different sizes, to meet her changing physical needs throughout her pregnancy. In turn, her supervisor provides two options: she could either take leave when she can no longer fit her uniform (even though she would still be able to perform her duties at that time); or she could have her current uniform altered and later re-altered at her own cost.

After some discussion, they agree on an appropriate solution that both meets the employee's needs and does not negatively affect her: she will be supplied one new uniform, to be altered as needed throughout her pregnancy, at the employer's expense

WHAT ARE SOME COMMON ISSUES AND SOLUTIONS?

Typically, there are four time periods when employers may be dealing with questions about how to treat pregnant employees. These are during:

- applications, interviews, job selection and job promotion;
- an employee's pregnancy while in the workplace;
- an employee's maternity leave or pregnancy-related absence; and
- an employee's return to work post-pregnancy.

Applications, interviews, job selection, and job promotion

- Decisions on awarding jobs or promotions should not be discriminatory.¹² This includes the job advertisement, the application and interview process, any ranking or testing which is used to assess candidates, and the decision-making process itself.¹³
- Job advertisements should not exclude applicants who are pregnant, who are of assumed childbearing age or who have children.
- Interviewers should not ask about plans to have children, use of birth control, or pregnancy. They can ask if the candidate can work the required hours.
- Employment should not be denied simply because a woman is pregnant, or plans to have children. In rare cases, however, this may be a relevant factor for an employer to consider (e.g. where a pregnant employee would be unavailable to complete immediate short term contracts, urgent, or time-sensitive work).
- Promotions available to all employees should not be denied to pregnant employees, or to employees who might be trying to become pregnant.

During an employee's pregnancy

- When possible, a pregnant employee should attempt to schedule appointments outside of work hours, but when this is not possible, leave to attend pregnancy-related appointments should not be unreasonably withheld. This may be leave with or without pay, depending on the benefits and flexibility of the workplace.
- Sick leave should not be denied to pregnant employees when they are ill during employment. Sick leave must be granted in the same manner as to all other employees.¹⁴
- Maternity leave should not be forced upon pregnant employees. They should be allowed to take maternity leave when they are ready to take it.¹⁵
- Harassment of employees because they are pregnant is prohibited. Harassment could include touching a pregnant woman's abdomen, joking, teasing or commenting on her appearance or weight.
- Employment contracts or term employment should not be ended early because of pregnancy or the intention to take maternity leave.
- Less challenging tasks should not be given because of pregnancy unless specifically requested.¹⁶
- Training and promotional opportunities should not be denied because of pregnancy or intention to take maternity leave.
- During restructuring or downsizing events, the jobs of pregnant employees should not be targeted for elimination; they should be assessed in the same manner as other positions in the organization.

During an employee's maternity leave or pregnancy-related absence

- While on pregnancy leave, pregnant employees are entitled to the same employee benefits that they received during employment. Contributions towards employment benefits such as pension, health insurance, life insurance, disability, dental, medical etc. should be paid during maternity leave if the employee was receiving these benefits during employment. Employees responsible for a portion of the cost of benefits during employment, continue to be responsible for that portion while on maternity leave.
- Employees on maternity leave should be made aware of job opportunities that become available so that, if they wish, they can compete for them.
- Seniority and years of service continue to accrue during maternity leave, as this is not considered a break in the employment period.
- Employees should be able to use any normally available medical, dental, and health benefits while on maternity leave.
- Employees on maternity leave should be informed of any changes to their jobs, and be given the same opportunity to participate in any work-related discussions or consultations as employees who are at the workplace.

During an employee's return to work post-pregnancy

- Employees should return to the same job or a similar job, if the original job no longer exists.
- Employees should receive any wage increases that came into effect while they were on maternity leave.
- Employees who breastfeed or express/pump breast milk should be provided with accommodation for this purpose.¹⁷ Accommodation can include:
 - Providing a suitable clean place to breast-feed or express milk and to store milk.
 - Providing longer or extra breaks for the purpose of breast-feeding or expressing milk.
 - Allowing for the extension of maternity leave.
 - Allowing for alternative work arrangements.

WHAT ARE SOME BENEFITS AND BEST PRACTICES?

Benefits

In addition to meeting the legal obligations under the Act, employers may also benefit from developing family-friendly policies, informing employees of them, and preventing pregnancy-related discrimination in the workplace.

One benefit is simply a better workplace overall and in turn, a better business or service. Women make up half the workforce and are increasingly entering non-traditional fields. This is an important labour pool. By supporting excellent pregnancy-related policies, respecting their workers and ensuring a discrimination-free workplace, employers can encourage greater productivity, less employee turnover and greater staff commitment to their organizations. A good reputation and high employee morale also tend to reduce turnover costs, and make recruitment easier. This can all translate into better service to clients and customers, which are definite advantages in a competitive marketplace.

Another benefit is the long-term social and economic benefits for communities and the nation as a whole. It is useful to consider that pregnant employees literally create the workforce of the future and all employers rely on a labour force to exist and thrive. Supporting the replenishment of our workforce is a wise and humane investment that will benefit employers, local communities, and the national economy over the long-term.

Adopting effective policies and procedures to promote equity and diversity, educating managers and employees, and responding respectfully to individual circumstances, can all easily prevent or limit discrimination in the workplace. Furthermore, by being well equipped and aware of their responsibilities under the Act, employers can reduce their legal liability, and save time and

money when responding to a human rights complaint. Better yet, they may be able to prevent a complaint from ever happening.

Best practices

Employers are encouraged to create supportive working environments for pregnant employees. Managers and supervisors should seek out creative and flexible responses to individual pregnancy issues in the workplace. Temporary solutions can include the following:

- Flex-time
- Light duties
- Safer duties
- A different job
- No shift work
- No overtime
- Leave
- Part-time work
- Changing or sharing shifts
- Job-sharing or task-sharing arrangements
- Modified uniforms
- Extra washroom breaks as needed
- Time off for pregnancy-related medical appointments
- Preferred parking
- Flexible start time to deal with morning sickness or breast feeding schedules
- Allowing employees to breastfeed a newborn during work visits
- Longer or extra breaks and a private place to breast feed or express milk

The Commission encourages employers and pregnant employees to discuss options respectfully, and to work together to explore and agree upon the best solution(s) at the earliest opportunity. This involves open communication, creativity, flexibility, and often compromise by both parties. The parties should also remain open to adjusting a previously agreed-upon solution if circumstances change. If the workplace is unionized, union representatives should be welcome participants to these discussions and should facilitate options and enable flexible solutions from their side as well.¹⁸

In addition to supporting individuals, the Commission encourages all employers to develop their own internal policy regarding pregnancy rights, and to educate managers, supervisors and employees on this issue to prevent pregnancy-related discrimination.

WHAT DOES THE LAW SAY?

The Canadian Human Rights Act

The *Canadian Human Rights Act* (the Act) is semi-constitutional law in Canada that provides the legal framework for a fundamental social goal: the elimination or prevention of discrimination and the promotion of equality.¹⁹

The Act provides a formal complaint process for employees who feel that they have been negatively affected by discrimination. The Canadian Human Rights Commission resolves complaints, refers them to a Tribunal hearing, or dismisses them. The Commission also encourages employers under its jurisdiction to create and maintain workplaces that foster dignity and respect for all employees.

The Act prohibits discrimination on 11 grounds, including sex. In 1986 the law was changed to clarify that pregnancy-related discrimination is sex discrimination.²⁰ In addition, in 1989 the Supreme Court of Canada confirmed that pregnancy-related discrimination is a type of sex or gender discrimination.²¹

Case law has also been developed to explain that under the Act, the ground of sex includes pregnancy and childbirth, as well as conditions and circumstances related to pregnancy and childbirth. The Act notes that special measures to assist employees with pregnancy and childbirth are not discriminatory.²²

The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* (the Charter) is part of Canada's Constitution; it is the highest law of the nation. The Charter outlines fundamental rights and freedoms guaranteed to all Canadians, including the equality rights of women.²³

International standards

International law recognizes that women's equality rights include the right to be free from discrimination related to pregnancy.

The *Convention on the Elimination of All Forms of Discrimination Against Women* states that countries should prevent and prohibit discrimination against women on the basis of pregnancy and that appropriate services in connection with pregnancy and breastfeeding should be provided.²⁴ The *Universal Declaration on Human Rights* states that motherhood is entitled to special care and assistance.²⁵ Similarly, the *International Covenant on Economic, Social and Cultural Rights* recognizes that states should adopt measures to help protect motherhood.²⁶ In the *Beijing Platform for Action*, the *United Nations Fourth World Conference on Women* stated that

it is a basic right of women to make decisions concerning reproduction and childbearing free from discrimination.²⁷ In addition, there are several international documents that specifically prohibit the discrimination of pregnant women in the workplace.²⁸

Other laws

In addition to the *Canadian Human Rights Act*, employers are legally obligated to meet the requirements of other workplace legislation, including the *Employment Equity Act*, the *Canada Labour Code*, and the *Employment Insurance Act*. These and other employment-related statutes or policies may provide specific protections and benefits to pregnant women. This policy does not explain these other laws, but the Commission encourages all employers to educate themselves on their obligations under these and other applicable laws.

WHAT IS THE CANADIAN HUMAN RIGHTS COMMISSION'S ROLE?

If a pregnant employee believes that she is negatively affected by discriminatory workplace practices or policies contrary to the Act, she may file a complaint before the Commission.

The Commission encourages employees to also consider whether other avenues of recourse are available to them, such as filing a grievance.

Upon receiving a complaint, the Commission will analyse the complaint and determine the best course of action. This may include assisting the employee and employer to resolve the problem through mediation; referring the complaint to a Canadian Human Rights Tribunal (the Tribunal) hearing; or dismissing the complaint.

The Tribunal is a separate body that has the power to make binding decisions and award remedies. If an employer is found to have discriminated, the Tribunal may require it to pay an employee damages, or to change its practices or policies to reduce or eliminate the discriminatory effect.

OTHER INFORMATION AND RESOURCES?

- [Canada Labour Code](#)
- [Employment Insurance Act](#)
- Canada Occupational Safety and Health Regulations;
- *Government Employees' Compensation Act*;
- Treasury Board Policy on Occupational Safety and Health;
- Treasury Board [Manager's Guide](#) to Canada Labour Code Pregnancy Rights and Health and Safety Risks
- HRSDC [Pamphlet](#) on Occupational Health and Safety: Pregnant and Nursing Employees
- Collective Agreement provisions
- Treasury Board Policy on the Provision of Accommodation for Employees with Disabilities
- Internal policies at your workplace
- The Commission's publication: *A Place For All: A Guide to Creating an Inclusive Workplace*²⁹

¹ 14. (1) It is a discriminatory practice,... (c) in matters related to employment, to harass an individual on a prohibited ground of discrimination. (2) ...sexual harassment shall,...be deemed to be harassment on a prohibited ground of discrimination. 1980-81-82-83, c. 143, s. 7.

² 7. It is a discriminatory practice, directly or indirectly, (a) to refuse to employ or continue to employ any individual, or (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. 1976-77, c. 33, s. 7.

³ 10. It is a discriminatory practice for an employer, employee organization or employer organization (a) to establish or pursue a policy or practice, or (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination. R.S., 1985, c. H-6, s. 10; 1998, c. 9, s. 13(E).

⁴ Sometimes, workplaces have rules, policies, practices and behaviours that apply equally to everyone, but can create barriers based on an irrelevant group characteristic. These kinds of policies and practices that deprive or tend to deprive employees of employment opportunities because they are pregnant or plan to become pregnant must not be pursued or implemented by employers.

⁵ Section 3.1 of the CHRA states that "For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds." 1998, c. 9, s. 11.

⁶ For more information, please see Commission publications "A Place for All: A Guide to Creating an Inclusive Workplace," at http://www.chrc-ccdp.gc.ca/discrimination/apfa_uppt/toc_tdm-eng.aspx and "Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The Implications of Meiorin and Grismer" at <http://www.chrc-ccdp.gc.ca/discrimination/occupational-eng.aspx>

⁷ Section 15(2) of the CHRA states that (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

⁸ CHRC's *Guide to Accommodation See Employers and Employee Responsibilities when accommodation is required*, at: http://www.chrc-ccdp.ca/preventing_discrimination/toc_tdm-en.asp

⁹ Section 15(1) of the CHRA states that "It is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement;"

¹⁰ Ontario's Maternal Newborn and Early Child development Resource Centre provides a comprehensive list of the type of workplace hazards pregnant women should avoid. A good introductory guide to determining workplace safety issues, "How to be a Family Friendly Workplace" (Best Start Resource Centre, 2010) is available at: http://www.beststart.org/resources/wrkplc_health/pdf/preg_work_16pg_FNL.pdf

¹¹ A more thorough and comprehensive research guide "Workplace Health: Research and Strategies," is available at http://www.beststart.org/resources/wrkplc_health/pdf/WorkplaceDocum.pdf

¹² The CHRC encourages employers to consult its publication "Guide to Screening and Selection in Employment."

¹³ Section 8 of the Act states that: "It is a discriminatory practice (a) to use or circulate any form of application for employment, or (b) in connection with employment or prospective employment, to publish any advertisement, or make any written or oral inquiry, that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination."

¹⁴ *Alberta Hospital Association v. Parcels* (1992), 17 C.H.R.R.D/167 (Alta. Q.B.); (and related *Parcels v. Red Deer General & Auxiliary Hospital Nursing Home (Dist. No. 15)* (1991), 15 C.H.R.R. D/257 (Alta. Bd. of Inq.)) This case confirmed that adverse differential treatment of pregnant women in respect of benefits is discriminatory, and that pregnant women are entitled to use of sick leave benefits the same as other employees who are sick.

¹⁵ *Crook v Ontario Cancer Treatment and Research Foundation and Wight v. Ontario* (No.2) (2000) C.H.R.R. Doc. 00-130 (Ont. Sup. Ct.). This case confirmed that a pregnant woman should not be forced by her employer to take EI benefits instead of employer-provided benefits, and should be able to make her own benefits choices regarding the use of her entitlements.

¹⁶ Note: Wages and benefits cannot be decreased when a pregnant employee requires accommodation.

¹⁷ *Poirier v. British Columbia (Ministry of Municipal Affairs, Recreation and Housing)* (1997) 29 C.H.R.R. D.87 (B.C. Trib.) and *Carewest v. Health Sciences Association of Alberta (Re Degagne)* [2001] 93 LAC (4th) 129 (Alberta). This case confirmed that adverse differential treatment of women who are breastfeeding constitutes discrimination on the basis of sex.

¹⁸ *Renaud v. Central Okanagan School District No. 23* [1992] 2 S.C.R. 970, 16 C.H.R.R. D/425

¹⁹ Section 2 of the CHRA states that: The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

²⁰ Section 3(2) of the CHRA states that "where the ground of discrimination is pregnancy or childbirth, the discrimination shall be deemed to be on the ground of sex. R.S., 1985, c. H-6, s. 3; 1996, c. 14, s. 2.

²¹ *Brooks v. Canada Safeway Ltd.* (1989), 10 C.H.R.R. D/6183 (S.C.C.) confirmed that in human rights and equality-related legislation, "sex" or "gender" would include discrimination related to pregnancy.

²² Section 15. (1) of the Act states "It is not a discriminatory practice if ... (f) an employer, employee organization or employer organization grants a female employee special leave or benefits in connection with pregnancy or child-birth ..."

²³ Section 15 States (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Section 28 states 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

²⁴ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 11 States: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: a. the right to work as an inalienable right of all human beings; b. the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; c. the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; d. the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; e. the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; f. the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. Article 11.2 States 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: a. to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; b. to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; c. to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; d. to provide special protection to women during pregnancy in types of work proved to be harmful to them.

²⁵ Article 25

²⁶ Article 10(2)

²⁷ UN 4th World Conference (Beijing, China, September 1995) Platform for Action Strategic Objective C.1. (95).

²⁸ Such as the Programme of Action of the UN International Conference on Population and Development (Cairo, Egypt, September 1994), which states at 4.4 (f) and (g) that countries should take steps to eliminate inequalities between men and women, and in particular, eliminate discrimination by employers related to contraception use or pregnancy, and make it possible through law for women to combine roles or child bearing and breast-feeding with participation in the workplace. In addition the ILO General Conference of the International Labour Organization - C183 Maternity Protection Convention, 2000 provides a list of pregnancy and maternity-related rights in the workplace.

²⁹ http://www.chrc-ccdp.ca/discrimination/apfa_uppt/toc_tdm-en.asp